Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 1077 of 2001
(Old No. 737 of 1998)

National Insurance Company Ltd.,
25 M.G. Marg, Civil Lines, Allahabad
Through its Administrative Officer.
..... Appellant.

Versus

1. Smt.Buli Devi widow of Indra Kumar,
2. Master Om Pal S/o Indra Kumar
3. Dhoom Sing S/o Dare Singh,
4. Smt.Santo Devi wife of Dhoom Singh,
5. Bra Singh S/o late Sri Sanoo Singh,
6. Smt.Bhagirathi Devi W/o Sri Dare Singh,
   All residents of Village-Dadbyanwala,
   P.O. Laldang, P.S.Imapmpur, District Hardwar.

.....Claimants/respondents.

7. Sri Jhagar Singh Rawat,
   R/o Village-Padiya, P.O. Charkhal,
   Pauri Garhwal. (Owner of Bus No. UTS 1656),
   R/o Kundan Motor Stores, Mahipal Singh Dani
   Ki Building, Near Maszid, Najibabad, Kotdwara,
   Pauri Garhwal.
   ..... Opp. Party/respondent.

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Sri D.S. Patni, learned counsel for the appellant,
Sri Sudhir Kumar, learned counsel for the respondents.

Date: 2nd September, 2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the National Insurance Company Ltd. under Section 173 of the Motor Vehicles Act, 1988 against the impugned judgment and award dated 25.5.1998 passed by the Motor Accident Claims Tribunal/District Judge, Pauri Garhwal in Motor

Accident Claim Case No. 90 of 1993, whereby the claim petition was decreed against the Opp.party-National Insurance Company for a compensation of Rs.3,00,000/- alongwith interest at the rate of 18% per annum from the date of claim petition till the date of actual payment.

2- Brief facts giving rise to this appeal are that on 23.6.1993, deceased Indra Kumar alongwith his wife Buli Devi-claimant and brother-in-law Virendra was traveling in bus bearing registration No. UTS 1656. They were going from Kotdwara to Laldhang. When the bus stopped near Haldukhata crossing, deceased Indra Kumar tried to get down but before he could get down the driver of the vehicle drove the vehicle in high speed most rashly and negligently, on account of which Indra Kumar fell down and sustained grievous injuries. He was taken to Hospital where he died on account of injuries sustained in this accident. Deceased Indra Kumar was aged 24 years at the time of accident. He was a contractor and was earning about Rs. 3,000/- per month. The claimants filed the claim petition for compensation on account of death of deceased Indra Kuamr.

3- The opposite parties contested the claim petition before the Tribunal by filing their separate written statements. The Opp.party No.1-owner of the offending bus has admitted the alleged accident but has asserted thast Indra Kumar received injuries on account of his own rash and negligent act. Opp.party No.2-the National Insurance Company has asserted that the claim petition has been filed on wrong facts. The accident was also denied in the written statement. On the pleadings of the parties, the Tribunal framed necessary issues and decreed the claim petition against the Opp.party No.2-Insurnace Company

accordingly. Feeling aggrieved. The Insurance Company has come up in this appeal.

4- The learned counsel for the appellant confined his grievance and pressed the appeal only on the point of rate of interest. He contended that the rate of interest fixed by the Tribunal on the amount of compensation is wholly illegal and against the spirit of the Motor Vehicles Act and further contended that it should be reduced to 8% We have gone through the material on record and perused the impugned award. The learned Tribunal decreed the claim petition alongwith interest at the rate of 18% per annum from the date of claim petition to the date of actual payment of the compensation amount. Keeping in view the facts and circumstances of the case, we are of the opinion that the rate of interest fixed by the Tribunal appears excessive and it is reduced to 8%.

5- The appeal is partly allowed. The rate of interest on the amount of compensation is reduced from 18% to 8% (eight per cent) per annum. The Opp.party No.2/appellant-National Insurance Company shall pay the amount awarded by the Tribunal to the claimants alongwith interest at the rate of 8% (eight per cent) per annum from the date of claim petition till the date of actual payment. The impugned order dated 25.5.1998 is modified accordingly. The amount deposited in the appeal shall be remitted to the Motor Accident Claims Tribunal.

(B.S. Verma,J.) **(P.C.Verma.J.)**

02.09.2004
P.Singh